

Editor's note: modified -- See 79 IBLA 48 (Feb. 9, 1984)

ZULA C. BRINKERHOFF

IBLA 83-350

Decided August 22, 1983

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring all or portions of four lode mining claims null and void ab initio. U MC 226524 through U MC 226527.

Affirmed in part; set aside and remanded in part.

1. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Lode Claims

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Silver Spot Metals, Inc., 51 IBLA 212 (1980); Samuel A. Chesebrough, 49 IBLA 249 (1980); Federal-American Partners, 37 IBLA 330 (1978); Paul S. Coupey, 33 IBLA 178 (1977), overruled to the extent inconsistent.

APPEARANCES: Warren Driggs, Esq., Salt Lake City, Utah, and Zula C. Brinkerhoff, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Zula C. Brinkerhoff has appealed the decision of the Utah State Office, Bureau of Land Management (BLM), dated December 28, 1982, declaring the Amme and Constance No. 1 lode mining claims, U MC 226524 and U MC 226525, null and void ab initio in their entirety and the Constance Nos. 2 and 3 lode mining

claims, U MC 226526 and U MC 226527, null and void ab initio in part because all or a portion of the claims lie on lands that have been patented without reservation of the minerals to the United States.

On September 19, 1980, appellant and her brother, Vernon H. Clegg, submitted notices of location for the claims, a map, and filing fees for recordation of the claims with BLM. BLM issued a notice of deficiency because the claimants had failed to provide their current mailing address and the entire legal descriptions for the claims. These deficiencies were subsequently satisfied.

By letter dated June 2, 1983, counsel for appellant indicated that she did not wish to pursue further her appeal as to the Constance No. 1 claim, U MC 226525, that she intended to restake a window of unpatented land bordering the Constance Nos. 2 and 3 claims, U MC 226526 and U MC 226527, and that she would file an amended notice of location with BLM for those two claims. By order dated June 30, 1983, the Board dismissed this appeal as to claim U MC 226525.

[1] The notice of location for the Amme claim indicates that it was located on July 29, 1980, in sec. 10, T. 2 S. R. 4 E., Salt Lake meridian. The particular location for this claim is described on the location notice as follows:

Beginning at monument in center of entrance to the Emma Tunnel and running 300 feet in an easterly direction on Woodrow Claim No. 1 to post No. 1; thence 1500 feet in a southerly direction to post No. 2 of the Woodrow Claim No. 3; thence 600 feet westerly direction to post No. 3; thence 1500 in a northerly direction to post No. 4 on the Woodrow Claim No. 1; thence 300 feet to place of beginning.

Examination of the BLM status plat contained in the case file reveals that the land encompassed by the Amme claim as located by appellant in 1980 was conveyed by patent 1027696 without reservation of the minerals based on mineral survey 6792. ^{1/} Appellant contends that the Amme claim was previously known as the Emma mining claim. With her statement of reasons, appellant has submitted a partial copy of a lease of the Emma claim by Pacific Bridge Company to her father, Charles D. Clegg, in 1947. She states that she is not contesting the portion of the claim "lying on patented land (i.e. Woodrow #1)" but is only concerned with "the portion of the Amme which overlaps onto the unpatented land (i.e. George Claims #1 & #2)."

The description in the 1947 lease for the Emma claim reads as follows:

Beginning at center of entrance tunnel, this tunnel is on Woodrow No. 2 (Survey Number 6792) Mining Claim, running from this stake No. 1 in easterly direction 750 feet to Corner Stake

^{1/} Correspondence from appellant suggests that this land encompassed the Woodrow Nos. 1 through 6 and Clegg Nos. 1 through 3 lode mining claims patented to appellant's father in 1929.

No. 2; thence northerly 600 feet to Corner Stake No. 3; thence 1500 feet westerly to Corner Stake No. 4; thence 600 feet southerly to Corner Stake No. 5; thence easterly 750 feet to place of beginning. This claim joins Woodrow No. 1 and Woodrow No. 2.

Comparison of this description with that on appellant's 1980 notice of location for the Amme claim reflects that appellant did not locate the Amme claim in the same place as the Emma claim.

Mining claims may only be located on lands open to the operation of the United States mining laws. A lode mining claim located entirely on land previously patented without a reservation of minerals to the United States, is null and void ab initio. Jonathan Carr, 49 IBLA 17 (1980); Cole V. Mullen, 43 IBLA 102 (1979); John F. Drobnick, 41 IBLA 164 (1979). BLM's decision as to the Amme lode claim, U MC 226524, is affirmed.

BLM declared the Constance Nos. 2 and 3 lode claims null and void ab initio as to those portions of the claims lying on patented lands. The notices of location for these claims reflect that they were located on September 17, 1980, in secs. 2 and 11, T. 2 S., R. 4 E., Salt Lake meridian. Review of the BLM status plat indicates that a portion of each claim encompasses patented land. In the past, this Board has ruled that such locations are properly declared null and void ab initio as to patented land on the premise that, once minerals rights have passed from public to private ownership, the provisions of the mineral laws no longer apply, and the land is not available for the location of mining claims. See, e.g., Silver Spot Metals, Inc., 51 IBLA 212 (1980); Samuel A. Chesebrough, 49 IBLA 249 (1980); Federal-American Partners, 37 IBLA 330 (1978); Paul Coupey, 33 IBLA 177 (1977).

The purpose of fixing the end lines and side lines for a lode mining claim is to describe, define and limit the property rights associated with the claim. Under the general mining law, however, so long as the discovery on which the location is based is on unappropriated land, the exterior boundaries lines may be laid within or across the surface of patented land solely for the purpose of claiming unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit. This principle permits development of unappropriated mineral in irregular parcels of land in compliance with the statutory requirement for parallel end lines (30 U.S.C. § 23 (1976)). The Hidee Gold Mining Co., 30 L.D. 420 (1901). See Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55 (1898). In Federal-American Partners, supra, this Board purported to dispose of the appellants' assertion that location lines may be laid within or across the surface of patented land by reference to Swanson v. Sears, 224 U.S. 180 (1912). The Board failed to recognize, however, that the controlling fact in Swanson was that the discovery point for the later location was within the limits of the earlier claim. 224 U.S. at 181. A locator may not locate a lode mining claim based on a discovery on patented land because such land is not open to the operation of the mining laws, but a locator whose discovery is on lands open to location may extend the end lines and side lands of his claim across patented land to define the extralateral rights to lodes or veins which apex within the claim. None of the Board decisions involving lode mining claims situated, in part, on patented lands identified or discussed the

location of the discovery point. See Silver Spot Metals, Inc., *supra*; Samuel A. Chesebrough, *supra*; Federal-American Partners, *supra*; Paul S. Coupey, *supra*. To the extent that these decisions would require a finding that a lode location based on a discovery on unappropriated land was null and void ab initio as to any portion of the claim lying on patented land, rather than merely stating that they convey no surface rights to the patented lands, they must be overruled.

The information in the record of this case is not sufficiently accurate with respect to the discovery points for the Constance Nos. 2 and 3 lode mining claims to allow a determination that the discovery is on land open to location. Therefore, we will set aside BLM's decision as to those two claims and remand the case to BLM for further action in conjunction with appellant's submission of amended location notices for the claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed in part, set aside in part and remanded for further action consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

